

RETURN DATE: OCTOBER 1, 2019	:	SUPERIOR COURT
	:	
SUMMIT SAUGATUCK, LLC AND GARDEN	:	JUDICIAL DISTRICT
HOMES MANAGEMENT CORPORATION	:	OF NEW BRITAIN
	:	
V.	:	
	:	
CONNECTICUT DEPARTMENT OF HOUSING	:	AUGUST 28, 2019

CITATION

TO ANY PROPER OFFICER:

You are hereby commanded by the authority of the State of Connecticut to summon the Connecticut Department of Housing to appear before the Superior Court within and for the Judicial District of New Britain on the Return Date of October 1, 2019, then and there to answer the attached Appeal of Summit Saugatuck LLC, 55 Station Street, Southport, Connecticut 06890 and Garden Homes Management Corporation, 29 Knapp Street, Stamford, Connecticut 06907, by leaving **one** (1) true and attested copy of this Citation and attached Appeal, at least twelve (12) days before the Return Date, with the Hon. Seila Mosquera-Bruno, Commissioner, Connecticut Department of Housing, 505 Hudson Street, Hartford, Connecticut 06105; and by leaving **one** (1) true and attested copy of this Citation and attached Appeal, at least twelve (12) days before the Return Date, with the Hon. William Tong, Attorney General of the State of Connecticut, 55 Elm Street, Hartford, Connecticut 06106. Such Appearances shall not be made in person, but shall be made by filing a statement of appearance with the Clerk of the Court, 20 Franklin Square, New Britain, Connecticut 06051, on or before the second day following the Return Date.

Hereof fail not, but of this writ with your actions thereon make due service and return according to law.

Dated this 28th day of August, 2019, at Hartford, Connecticut.

PLAINTIFF,  
SUMMIT SAUGATUCK LLC

By:\_\_\_\_\_

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PLAINTIFF  
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APPEAL FROM FINAL DECISION / DECLARATORY RULING OF  
COMMISSIONER OF CONNECTICUT DEPARTMENT OF HOUSING

Summit Saugatuck, LLC and Garden Homes Management Corporation, having exhausted all available administrative remedies; having been denied a declaratory ruling from the Commissioner of the defendant Connecticut Department of Housing ("DOH"); and being aggrieved by that denial, appeal to this Court pursuant to General Statutes §§ 4-176(h) and 4-183(c), as follows:

1. Plaintiff Summit Saugatuck, LLC ("Summit Saugatuck"), whose office is at 55 Station Street, Southport, Connecticut 06890, is a developer, builder, and manager of multi-family residential, mixed use, and commercial property in Connecticut and several other states.
2. Since November 2018, Summit Saugatuck has had pending before the Town of Westport Planning and Zoning Commission a General Statutes § 8-30g application for a 187-unit rental development on Hiawatha Lane, in which 30 percent of the units will be set aside for 40 years for low- and moderate-income households.
3. The principals of Summit Saugatuck also own another property in Westport, 60 Charles Street, which is developable in compliance with § 8-30g.
4. Plaintiff Garden Homes Management Corporation ("Garden Homes") is a real estate developer, builder, and manager, with an office in Stamford, Connecticut. Garden Homes' portfolio includes hundreds of units of affordable housing, including units in mobile manufactured home parks in Connecticut, New York, and New Jersey.

5. During 2017-18, Garden Homes pursued a § 8-30g application before the Westport Planning and Zoning Commission, which application was denied and is now on appeal in Superior Court.

6. The Town of Westport is a Connecticut municipality located in Fairfield County, and bordering Norwalk, Wilton, Weston, and Fairfield.

7. General Statutes § 8-30g was adopted in 1989, effective July 1990, after a Governor's Blue Ribbon Commission, which met during 1988-89, produced a report documenting that (1) municipal land use commissions were most often using their authority to approve single-family homes in subdivisions on large lots, but were denying proposals to develop both governmentally-assisted and privately-financed multi-family development that was affordable to moderate or low income households; (2) under then-existing Connecticut land use law, courts were required to give deference to local decision-making; and (3) as a result, lower cost housing denials, even if based on spurious reasons, were being upheld in court based on judicial deference to local commissions, and little lower cost housing was being built.

8. The legislature's answer, modeled in large part on a successful Massachusetts law adopted in 1969 (known as "Chapter 40B"), and recommended by a "Blue Ribbon Commission," was what has become General Statutes § 8-30g, with the key provisions being to (1) define "affordable housing" as units built with government financial help, or privately financed proposals in which a minimum percent (originally 20 percent, now 30 percent) of the units would be preserved for the long-term (originally 20 years, now 40 years) for moderate and low income households; and (2) alter the burden of proof when an affordable housing applicant appeals a denial to court, by eliminating judicial deference to local decisions and requiring commissions to prove that the denial was based on a "substantial public interest in health, safety or other matters which the Commission may legally consider," and that such interests "clearly outweigh" the need for lower cost housing.

9. Recognizing that a relatively small number of municipalities are host to a relatively high percentage of lower cost housing units, the legislature, from the adoption of

§ 8-30g, exempted from the law all municipalities in which 10 percent or more of the existing housing stock is government subsidized, financed by the Connecticut Housing Finance Authority, or "deed restricted" to guarantee long-term affordability. This exemption, as of 2018, makes § 8-30g inapplicable to 29 of Connecticut's 169 towns. See § 8-30g(k).

10. Connecticut courts have recognized that § 8-30g is a remedial statute, intended to overcome exclusionary zoning practices; as a result, § 8-30g is to be broadly construed to achieve its remedial purposes, and claims of exemptions from § 8-30g, including moratoria, must be narrowly construed.

11. In 2000, the legislature adopted a package of procedural changes intended to require § 8-30g applicants to give municipal land use commissions more control over the processing of applications, and established the current system by which municipalities, after issuing certificates of occupancy to affordable units, can obtain from DOH a moratorium from § 8-30g applications and the Act's burden-shifting standard of review. In 2002, in Public Act 02-87, the moratorium was lengthened to four years.

12. The moratorium system, as adopted in 2000, grants a town "housing unit equivalent" ("HUE") points when it issues certificates of occupancy – not simply zoning approval – for units that either qualify as "assisted housing" – built with financial help from a government housing program – or a "set aside development," in which at least 30 percent of the units will be preserved for 40 years or more for low and moderate income households.

13. The Act's moratorium system includes these requirements for a Certificate application:

- a. a complete application, allowing the DOH and the public to understand and verify all point total claims;
- b. evidence of compliance with notice requirements;
- c. public disclosure by the DOH of all parts of the town's application, to allow for public comment;

d. evidence not only of § 8-30g intended compliance at the time the development was granted zoning approval or issued certificates of occupancy, but evidence of on-going compliance, continuing to the time of the Certificate application to the DOH; and

e. proper documentation of point deductions for the demolition of affordable housing units.

14. Points are only awarded for units that were newly built or newly deed-restricted after July 1, 1990, the effective date of § 8-30g. State regulations spelling out administrative procedures and details, including for the preparation, filing, and processing of moratorium applications, were adopted in 2002, *see* Regs. Conn. State Agencies § 8-30g-6.

15. To date, Trumbull, Darien (twice), Berlin (twice), Wilton, New Canaan, Farmington, Brookfield, Ridgefield, and Milford have been granted moratoria.

16. When a town is ready to file a moratorium application with the DOH, it must first publish a notice in a local newspaper, stating the town's intent to apply, where the application materials are available, the rights of persons to submit comments, and the right of residents to petition for and obtain a hearing before the town's legislative body or planning and zoning commission to review the proposed Certificate application. *See* § 8-30g-6(j)(1) of the Regulations.

17. After the local review period, the town may file its application with DOH, which must publish a notice in the *Connecticut Law Journal* and identifies the dates of a 30 day public comment period. *See* §§ 8-30g(l)(4)(A) and (B). Thereafter, DOH may deny the application, ask for additional information, or approve, within 60 days. If approved, DOH publishes a notice as to the effective date of the moratorium. *Id.*

18. The Town of Westport filed an application for a Certificate in November 2018, initially claiming 220 points against a statutory qualifying standard of 207.

19. Regs. Conn. State. Agencies § 8-30g-6(j)(1) requires local notice and spells out the rights of municipal residents and the public prior to the commencement of a moratorium application (emphasis added):

A municipality intending to submit to the department an application for a state certificate of affordable housing completion shall publish in the Connecticut Law Journal and in a newspaper of general circulation in the municipality a notice of its intent to apply and the availability of its proposed application for public inspection and comment. Such notice shall state the location where the proposed application, including all supporting documentation, shall be available for inspection and comment, and to whom written comments may be submitted. Such application and documentation shall be made available in the office of the municipal clerk for no less than twenty (20) calendar days after publication of notice. *If within the comment period, a petition signed by at least twenty-five (25) residents of the municipality is filed with the municipal clerk requesting a public hearing with respect to the proposed application, either the municipality's legislative body or its zoning or planning commission shall hold such a hearing.* A copy of all written comments received, responses by the municipality to comments received, and a description of any modifications made or not made to the application or supporting documentation as a result of such comments, shall be attached to the application when submitted to the commissioner.

20. In November 2018, Westport published a notice that stated in its entirety:

Notice is hereby given that the Town of Westport, Connecticut intends to file an Application for Certificate of Affordable Housing Completion (moratorium on the applicability of Section 8-30g) with the Department of Housing of the State of Connecticut, pursuant to Section 8-30g(l)(4)(B) of the Connecticut General Statutes.

The proposed application, including all supporting documentation, is available for public inspection and comment in the Office of the Town Clerk, Town Hall, 110 Myrtle Avenue, Room 105, Westport, Connecticut, from 8:30 a.m. to 4:30 p.m. weekdays. Written comments may be submitted to Mary Young, Planning and Zoning Director, at the Planning and Zoning Office in Town Hall, 110 Myrtle Avenue, Room 203, within 20 days of the publication of this notice in the Westport News and the Connecticut Law Journal. A copy of all written comments received and responses prepared by the municipality will be included as part of the application to the Department of Housing.

21. Westport then proceeded with filing its application for a Certificate with DOH, on December 5, 2018. The application only provided partial evidence of restrictions on household incomes, monthly rents, or sale / resale prices as of the date of zoning approval, and no evidence for any points claimed of on-going compliance with affordability restrictions from the year of occupancy to the date of the Certificate application.

22. DOH published notice on December 25, 2018 of its receipt of Westport's application, thus beginning the opportunity for interested parties to submit comments on or before January 24, 2019.

23. Upon review of the local notice, Attorney Anika Singh Lemar of Yale Law School wrote to Westport First Selectman Marpe on January 2, 2019, pointing out that the published notice was defective because it did not apprise anyone of the opportunity to petition the Westport Representative Town Meeting or Planning and Zoning Commission for a hearing on Westport's application, prior to filing with DOH.

24. In addition, an attorney representing Morningside Homes, LLC, and Greens Farms Developers, LLC (developers who, at that time, had a pending § 8-30g application), filed a comment / objection letter on January 18, 2019. In that letter, Attorney David Hoopes pointed out a substantial (7.0 points) math error in the town's application, and explained why the town's points claims for other developments improperly claimed 58 points.

25. On January 22, 2019, Summit Saugatuck (which had filed its § 8-30g application in November 2018) filed its own comment letter.

26. Attorney Lemar of Yale Law School, on behalf of herself and the Open Communities Alliance, filed a letter with objections and comments on January 23, 2019.

27. On January 24, 2019, Westport filed with DOH two letters, one from Town Attorneys Ira Bloom and Nicholas Bamonte, and one from Redniss & Mead, a land planning / consulting / engineering firm located in Stamford. In these responses to Attorney Hoopes, Westport corrected and reduced its claimed points from 220.25 to 216.25, and conceded that some of its remaining claims might not strictly adhere to statutes and regulations.



28. DOH, in January and February 2019, did not publicly disclose the submission, existence, or content of these two late-filed letters or make them available for public comment.

29. In a February 14, 2019 letter to Attorney Lemar of Yale Law School, responding to her January 2, 2019 letter, DOH took the position that a statement of the right of residents to petition for a hearing at the local level did not need to be part of a town's published notice of intent to file for a Certificate, because the right to petition is contained in a separate sentence from the words, "Such notice shall state. . . ."

30. DOH then issued its letter granting the Certificate on February 25, 2019, and published notice of the grant of the Certificate in the *Connecticut Law Journal* on March 6, 2019, thus commencing the four-year moratorium on that date.

31. Also on March 6, DOH, for the first time, provided the plaintiffs with a copy of the town's January 24, 2019 letters.

32. DOH's February 25, 2019 letter contains its point calculations, but contains no responses to the comments and objections stated in the January 2019 letters from Attorney Lemar of Yale Law School / OCA, Summit Saugatuck, Garden Homes, or Morningside / Greens Farms.

33. In several instances, DOH recalculated the town's point claims, most notably for the Hidden Brook development, for which the town claimed 6.0 points, but DOH, based on unidentified and undisclosed "records of the Department," granted 30 points, without which the application would have been denied.

34. In response to the action of DOH described above, Summit and Garden Homes, on June 4, 2019, filed with defendant DOH, pursuant to General Statutes § 4-176, a declaratory ruling petition, Exh. 1 (without petition attachments), attached.

35. The petition raised several questions of statewide importance, because (1) § 8-30g is a remedial statute, intended to address Connecticut's acute shortage of affordable housing and to provide a remedy to exclusionary zoning practices; (2) the moratorium procedure, which exempts a town for four years from several types of affordable housing development that have been successful in producing lower cost housing, is potentially available to 140 of Connecticut's

169 municipalities (29 towns are currently exempt from § 8-30g); (3) the questions posed in this petition potentially affect every four-year moratorium application that may be filed in the future with DOH; and (4) DOH did not respond to the critical issues raised in the petitioners' January 2019 letters when it ruled on Westport's application on February 25, 2019.

36. The petition posed for declaratory ruling the following issues regarding DOH's 2018-2019 processing of Westport's application:

1. Did the DOH violate Regs. Conn. State Agencies § 8-30g-6(j)(1) by processing and granting Westport's application after the town's November 2018 published notices of its intention to file a moratorium application with the DOH failed to notify residents of their right and opportunity to petition Westport's Representative Town Meeting or Planning and Zoning Commission for a public hearing, through the filing of a petition signed by at least 25 residents?
2. Did the DOH violate General Statutes § 8-30g(l)(4)(B) and Regs. Conn. State Agencies § 8-30g-6(j)(4), which require the DOH to make available for public comment all parts of a Certificate application, by accepting Westport's January 24, 2019 letters (Exhs. 10, 11), which substantively altered Westport's claimed point totals and conceded that some of its points claims did not meet statutory requirements, but then failing to make those letters available for public comment, and failing to timely disclose them to the parties who, as of January 24, 2019, had already submitted written comments?
3. Did the DOH violate General Statutes § 8-30g(l) and Regs. Conn. State Agencies § 8-30g-6 by granting moratorium points for developments for which Westport did not provide any evidence of on-going compliance with affordability restrictions, from the date of initial residential occupancy or newly-imposed affordability restrictions to the date of the Certificate application, such as the annual rental unit § 8-30g compliance reports that each town is required to receive from each affordable housing development administrator pursuant to General Statutes § 8-30h, or periodic compliance reports that are required by all federally- or state-subsidized affordable housing programs?
4. Did the DOH violate § 8-30g(a)(6) of the General Statutes by awarding 9.0 moratorium points for a development (Rotary Centennial House) for which the town did not submit evidence of a

minimum "affordability period" meeting the statutory requirement for minimum duration?

5. Did the DOH violate General Statutes §8-30g(l) and Regs. Conn. State Agencies § 8-30g-6, and/or make a material factual or mathematical error, by granting 30 points for the Hidden Brook development, when Westport had only claimed 6.0 points for that development, and where the DOH's calculation was based on unidentified and never publicly-disclosed "records of the Department" as to the number and affordability characteristics of pre-existing units that were demolished when the Hidden Brook development was constructed in 1999?

37. As to Question 1, the petitioners asserted that to properly provide Westport residents and others an opportunity to be heard, the locally-published notices of Westport's intent to apply should have included a description of the right of 25 residents, by signing and filing a petition, to obtain a public hearing on Westport's Certificate application at the Westport Representative Town Meeting or Planning and Zoning Commission.

38. Regarding Question 2, the petitioners pointed out that Regs. Conn. State Agencies § 8-30g-6(j)(4) states: "Such application [when received and deemed complete by the DOH], including all supporting documentation, shall be made available to the public"; and pointed out that DOH had not made public for comment Westport's amended points claims or concession that portions of its points claims (almost 100 of its 210-220 points) might not meet the requirements of the Act and applicable regulations.

39. As to Question 3, the petitioners noted that Westport's application did not include evidence of on-going compliance with statutory and regulatory affordability requirements from the date of initial residential occupancy or newly-imposed affordability restriction, to the date that Westport filed its Certificate application with DOH, as required by multiple provisions of the Act and Regulations. See ¶¶ 13.d and 21, above.

40. As to Question 4, the petitioners explained that the town did not establish the duration of the deed restriction as required by § 8-30g(a)(6) for Rotary Centennial House, which was the basis for a claim of 9.0 points.

41. As to Question 5, the petitioners stated that DOH never identified or publicly disclosed the DOH "records" that it used to award the town 30 points for Hidden Brook when the town only claimed 6.0 points (and DOH issued approval by a total margin of 3.0 points).

42. The petitioners requested a DOH hearing on their petition.

43. As relief, the petitioners requested that DOH (1) revoke the Certificate issued on March 6, 2019; (2) direct the town to recalculate, justify, and refile its application in light of the issues raised and answers issued as a result of this petition; and (3) re-process Westport's application in light of this petition, with a new public comment period.

44. Summit Saugatuck, LLC and Garden Homes Management Corporation alleged that they had standing to bring the petition because each is an owner of real property that was, as of the date of the petition, utilizing, or eligible to use, § 8-30g to pursue an affordable housing development in Westport; and that although zoning applications filed prior to March 6, 2019 are grandfathered from the moratorium, each petitioner faces the possibility of having to reapply or refile if, for any reason, its current application leads to an alternative or substantially revised site plan. Summit Saugatuck's principals also owns other land in Westport that could be developed under § 8-30g.

45. On June 14, 2019, the Town of Westport submitted a memorandum to the DOH, asserting that the petition should be dismissed for lack of standing, Exh. 2, attached.

46. The petitioners responded to that memo on July 10, 2019, Exh. 3, attached, pointing out, in part, that the Westport Planning and Zoning Commission, on June 20, 2019, had denied Summit's § 8-30g application, citing DOH's certificate issuance as a basis for the denial.

47. On July 2, 2019, the DOH published notice of the pendency of the petition in the *Connecticut Law Journal*.

48. On July 29, 2019, with a certified mailing dated August 2, 2019, DOH denied the petition, stating that the petitioners had not alleged sufficient facts to show an injury to property rights; were not aggrieved; and had not sought a ruling on the "applicability" of General Statutes

§ 8-30g or its associated regulations within the meaning of General Statutes § 4-176. *See* Exh. 4, Conclusions 2, 3, 4, 5, 6, 7, 8, attached.

49. DOH's denial constitutes an appealable, final decision under General Statutes §§ 4-183(c) and 4-176(h).

50. The plaintiffs, who are "persons" with standing under General Statutes § 4-176(a), are aggrieved by the denial, and DOH's denial is illegal, in one or more of the following respects:

a. The ownership of real property that is eligible for development in compliance with General Statutes § 8-30g, or actually at issue in a § 8-30g application, provides a distinct property interest, and standing.

b. Having a § 8-30g application pending before the Westport Planning and Zoning Commission or on appeal in the court system constitutes standing, because land use applications sometimes result in amended applications being necessary, which re-applications would be blocked by a moratorium.

c. The Westport Planning and Zoning Commission in June 2019 cited DOH's issuance of the moratorium as a reason for denial of Summit's § 8-30g application, and with regard to Garden Homes, has cited its intent to apply for a moratorium.

d. The petition, on its face, sought a declaratory ruling on the applicability of § 8-30g and its regulations to specified circumstances, that is, DOH's processing of Westport's moratorium application.

e. DOH's petition denial reasons, in effect, state that only a party who is actually prohibited by the moratorium from filing a § 8-30g application with the Westport Planning and Zoning Commission has standing to seek a declaratory ruling regarding the validity of the moratorium, thereby not recognizing that no property owner would prepare and file a § 8-30g application only for the specific purpose of challenging the moratorium.

WHEREFORE, plaintiffs Summit Saugatuck LLC and Garden Homes Management Corporation respectfully ask this Court for the following relief:

1. A determination that the Department of Housing's August 2, 2019 denial was illegal;
2. An order to DOH to process the petition and to answer each of the June 4, 2019 Declaratory Ruling petition questions;
3. Award costs as provided by General Statutes § 8-8(l); and
4. Grant such other and further relief as may be just and proper.

PLAINTIFF,  
SUMMIT SAUGATUCK LLC

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Please enter the appearance of Shipman & Goodwin LLP for plaintiff Summit Saugatuck LLC. Shipman & Goodwin LLP agrees to accept papers (service) electronically in this case under Practice Book § 10-13.

\_\_\_\_\_  
Shipman & Goodwin LLP

PLAINTIFF,  
GARDEN HOMES MANAGEMENT  
CORPORATION

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Its Attorney

Please enter the appearance of Halloran Sage  
for plaintiff Garden Homes Management  
Corporation. Halloran Sage agrees to accept  
papers (service) electronically in this case  
under Practice Book § 10-13.

\_\_\_\_\_  
Halloran Sage